REPORT

OF THE

COMMISSION

TO REVISE THE

CONSTITUTION

OF

PENNSYLVANIA,

MADE TO THE

LEGISLATURE, JANUARY 29, 1875.

HARRISBURG
[illegible] STATE PRINTER.
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To the Honorable the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met:

The Commission appointed by the Governor, under the act of the 14th of of May, A. D. 1874, entitled "An Act to create a Commission to prepare amendments to the Constitution of this Commonwealth," respectfully beg leave to report:

That the Commission was organized in pursuance of the said act, by electing Daniel Agnew, the chairman, and James I. Chamberlin, Esq., of Harrisburg, the clerk of the Commission.

In executing the duty imposed by the act, it has not been deemed wise or necessary to recommend much alteration of the new Constitution. The work of the convention, which framed it, was extensive and thorough, presenting in fact, a new frame of government. In a work of such magnitude, it would be expected some errors would creep in, and omissions be unnoticed; and yet careful examination has disclosed but few. As a whole, it contains valuable reforms, which have been sanctioned by an overwhelming majority of the people. There are features upon which differences of opinion exist; but which having been settled by the popular vote, at least for the present, it is thought wise to be permitted to remain untouched, until time and experience shall have exhibited their utility or inutility.

With the single exception of the judiciary article, the least unanimous in its adoption by the convention, we have confined our revision to the removal of inconsistencies and patent defects, and to changes in a few provisions which seem to be really necessary; our object being rather to perfect than to change, thus assisting to make the instrument conform to the true spirit and intent of the body which proposed it.

The second and third article relating to the Legislature and legislation, and containing the most valuable reforms, we have touched lightly, and only for the purpose of perfecting them; we propose the following amendments, and we have added in each instance, by way of explanation, our reasons more or less at large.

Article II. Section 11. Add to the end of the section the following: "Nor shall a member of either house be permitted to resign pending a trial by the house, or an inquiry into his conduct, which may lead to his expulsion."

The section as amended will then read: Each house shall have power to determine the rules of its proceedings, and punish its members, or other persons for contempt or disorderly behavior in its presence, to enforce obedience to its process, to protect its members against violence, or offers of bribes, or private solicitation, and, with the concurrence of two-thirds, to expel a member, but not a second time for the same cause, and shall have all other powers necessary for the Legislature of a free State. A member expelled for corruption shall not thereafter be eligible to either house, and punishment for contempt or disorderly behavior shall not bar an indictment for the same offense.

Nor shall a member of either house be permitted to resign pending a trial by the house, or an inquiry into his conduct, which may lead to his expulsion.

Remarks.—The purpose of this amendment is obvious. A knowledge that expulsion cannot be avoided will tend to prevent corrupt practices. Instances have occurred in which members charged with offenses deserving the severest censure have escaped punishment altogether by resigning, because it was held that such resignation ousted the jurisdiction of the proper house over the offender. It as due as well to the dignity of the Legislature as to further justice that crime and disgraceful offenses shall not escape punishment in this manner.

Article III. Section 3. Strike out the word "*general,*" in the first line. The section will then read:

"No bill, except appropriation bills, shall be passed, containing more than one subject, which shall be clearly expressed in its title."

Remarks.—The purpose of this amendment is to make the section conform to the amendments proposed to the 15th section of the same article.

Article III. Section 15. Amend, by inserting after the word "schools," in the 4th line, the following:

"All other appropriations for charitable and educational purposes, which may be made by a majority vote, shall be embraced in one bill; and all appropriations for such purposes, requiring a vote of two-thirds of the members elected to each House, shall be embraced in one bill." This section will then read:

"The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the Executive, Legislative and Judicial

Departments of the Commonwealth, interest on the public debt, and for public schools; all other appropriations for charitable and educational purposes, which may be made by a majority vote, shall be embraced in one bill, and all appropriations for such purposes, requiring a vote of two-thirds of the members elected to each House, shall be embraced in one bill; all other appropriations shall be made by separate bills, each embracing but one subject."

Remarks.—The purpose of this amendment is to bring the subject of appropriations to charitable and educational purposes before the mind of the Legislature in one view, thereby enabling them to adjust the sums appropriated according to the relative merits of the objects of the public bounty, and to keep the aggregate sum appropriated within proper bounds.

Article V. Section 2. Insert after the word "*shall,*" in the second clause, "be commissioned by the Governor," and after the words "twenty-one years," the words "beginning on the first Monday of January next after their election." The second clause will then read:

"They shall be commissioned by the Governor, and shall hold their offices for the term of twenty-one years, beginning on the first Monday of January next after their election, if they shall so long behave themselves well, but shall not be again eligible."

Remarks.—As the Constitution stands, the power to commission the judges is only an inference, and no time is fixed for the beginning of their terms. The purpose is to supply these features of the amendment of 1850, which were probably overlooked, or lost sight of, in the transfer of its provisions to different places in the new Constitution.

Article V. Section 3. Strike out the whole clause relating to the original jurisdiction of the Supreme Court and substitute the following:

"They shall have original jurisdiction in cases of injunction, where a corporation or a public officer is a party defendant of *habeas corpus, mandamus* and *quo warranto*, but shall not exercise any other original jurisdiction."

The section will then read:

The jurisdiction of the Supreme Court shall extend over the State, and the judges thereof shall, by virtue of their offices, be justices of oyer and terminer and general jail delivery in the several counties. They shall have original jurisdiction in cases of injunction, when a corporation or a public officer is a party defendant of *habeas corpus, mandamus* and *quo warranto*, but shall not exercise any other original jurisdiction. They shall have appellate jurisdiction by appeal, *certiorari* or writ of error in all cases, as is now or may hereafter be provided by law.

Remarks.—The purpose of this amendment is to restore so much of the original jurisdiction of the Supreme Court as seems to be absolutely necessary.

The possession of these powers by the court in last resort is essential to the welfare of the State. The writ of injunction is a great State process to restrain wrong doing. It is necessary to prevent public officers from overstepping the boundaries of law, to prevent the misconstruction of law, and to determine in doubtful cases how public servants shall act. The power is essential to the public good. So the power by *mandamus* to compel inferior jurisdictions, public officers, corporations and others to perform their duties, is absolutely necessary to both public and private interest.

Equally important is the power by *quo warranto* to inquire into the right of persons claiming public offices or to perform public functions without authority of law, or to exercise the franchises and liberty of the State without right.

These powers are often essential to the protection of the Constitution itself. They were limited by the Convention probably to lessen the labors of the Supreme Court; but the remedy was disproportionate to the end to be served, and tends to endanger the rights of the Commonwealth herself.

As the section stands, important State interests are committed to subordinate local tribunals, subject to contrarieties of opinion and to sectional influences, and sometimes, locally too, far removed from the proper place of litigation. One judge may inquire into the right of another, his equal in standing and authority, to hold his office, or may command him to proceed to perform a certain function which he has declined to perform. The public interest often demands promptness and dispatch, while the remedy by appeal would be ruinous as well as dilatory. These powers should be possessed by a body of judges representing the whole State, and superior in authority to those whose acts they must review. They should belong to a body drawn from different parts of the State, unaffected by local influences and unlikely to run into peculiarities of opinion or feeling whose action is both prompt and final. In the recent case of this Commonwealth *ex rel.* Butler *vs.* Governor Hartranft, from Butler county, the Supreme Court was compelled to decline jurisdiction on the ground that it had been taken away by the section referred to. The effect was to deny a remedy to a justice claiming a lawful election and a right to be commissioned. It would send him to Harrisburg for his writ.

Article V. Section 5. Strike out the entire section, and substitute as follows:

"Section 5. A single county shall be made a separate judicial district only when the business therein shall render it necessary; but no single

county containing a population of less than fifty thousand shall be erected into a separate judicial district.

"In separate districts composed of single counties, the office of associate judge, not learned in the law, shall cease to exist when the commissions of such associates in office, at the time of the creation of the district, shall expire."

"In each separate district composed of a single county, one judge learned in the law, shall be elected to preside therein, and an additional judge or judges learned in the law elected only when the business therein shall render it necessary; but no additional law judge shall be elected therein, unless it contain a population of seventy-five thousand. Sufficient provision by law shall be made for the holding of special courts therein, in case of the necessary absence or sickness of the presiding judge, or of his disability by reason of interest, kinship or otherwise."

"Existing separate districts of single counties shall be abolished in all counties wherein the population is less than fifty thousand, and in counties of greater population wherein the business shall not require their continuance; and for this purpose the General Assembly shall re-district the State for judicial purposes, at the session succeeding the next decennial census, to take effect in the abolished separate districts, when the commissions of the judges elected therein, in the year 1874, shall expire. All commissions issued upon elections to fill vacancies accruing in the meantime in the separate districts thus abolished, shall be subject to the provisions of this section for re-districting the State."

Remarks.—The purpose of this amendment is to change the basis of the judicial system as founded by the new Constitution on population. Business, not population, must determine the necessity for separate single county districts. A purely agricultural county, having a population of 40,000, rarely requires its courts to sit more than six, eight or ten weeks in the year. A table accompanying this report, drawn from the actual sittings of the courts in the years 1872 and 1873, as taken from the minutes by the several prothonotaries, will exhibit the effect of the change to the basis of 40,000, contained in the original section. A judge employed so small a part of his time has too little to do, and will retrograde instead of improving.

There is no county in this Commonwealth having a population of 40,000 or less, which affords enough of legal business to occupy a judge profitably to himself or his district. No judge can afford to preside in such a district. No such district can afford to shut up its judge to business so small in amount and so circumscribed in character.

Instead, therefore, of requiring every county having a population of 40,000, to be made a separate district without regard to the volume of its

legal business, it would be wiser to fix a limit below which the Legislature may not go, and leave the question of the erection of separate districts in counties above that limit, to the exercise of a sound legislative discretion upon consideration of all the circumstances in each particular case. An inspection of the table will show that the office of president judge in some of the agricultural districts is almost a sinecure, while in some of the mining, manufacturing and other business counties, the courts are constantly employed. Such was the case in 1872 and 1873, when only thirty judicial districts existed; the effect of the population basis was suddenly to raise the number of districts in 1874, to forty-four, many of which are positively unnecessary. If the State were justly re-districted according to its business wants, it is fair to say that the districts would be reduced below thirty, and but few of the present associates learned in the law would be required, except in large cities and densely populous counties. In a matter so important, when both business and population are changing, a discretion must be left to the representatives of the people. The subject is one that appeals only to the public good, and to no self-interest.

Table exhibiting the number of days, taken from the minutes, the Courts sat in the several Counties and Judicial Districts, in the years 1872 *and* 1873, *and the average in weeks of these years:*

I.—Single County Districts.

COUNTIES.	No. of Districts	1870. Population	Days, 1872.	Days, 1873.	Average in weeks.
Adams	42	30,315	48	53	8 2-6
Armstrong	33	43,382	48	60	9
Beaver	36	36,148	30	40	6 1-6
Berks	23	106,701	132	156	24
Bradford	13	53,204	103	94	16 2-6
Bucks	7	64,336	66	67	11
Chester	15	77,805	90	102	16
Crawford	30	63,832	136	142	23 1-6
Cumberland	9	43,912	45	69	9 3-6
Delaware	32	39,403	32	30	5 1-6
Erie	6	65,973	115	115	19 1-6
Indiana	40	36,138	37	38	6 1-6
Lancaster	2	121,340	140	153	24 2-6
Lehigh	31	56,796	100	101	16 4-6
Luzerne	11	160,755	121	123	20 2-6
Lycoming	29	47,626	69	88	13
Mercer	35	49,977	34	41	6 1-6
Montgomery	38	81,612	61	72	11
Northampton	3	61,432	83	79	13 3-6
Northumberland	8	41,444	99	83	15 1-6
Schuylkill	21	116,428	C. P. 126 C. C. 151	107 115	19 2-6 22 1-6
Susquehanna	34	37,523	61	75	11 2-6
Venango	28	47,925	94	116	17 3-6
Washington	27	48,483	43	37	6 4-6
Westmoreland	10	58,719	63	62	10 3-6
York	19	76,134	111	93	17

II.—Districts of more than one County.

Counties.	No. of district.	1870. Population.	1872. No. days.	1873. No. days.	Average in weeks.
Bedford	16	29,635	31	32	5 1-6
Somerset		28,226	32	41	6
		57,861			11 1-6
Blair	24	38,051	57	61	9 5-6
Cambria		36,569	43	36	6 3-6
Huntingdon		31,251	41	41	6 5-6
		105,871			22 1-6
Butler	17	36,510	57	64	10
Lawrence		27,298	66	68	11 1-6
		63,808			21 1-6
Cameron	4	4,273	25	27	4 2-6
M'Kean		8,825	24	26	4 1-6
Potter		11,265	19	19	3 1-6
Tioga		35,097	51	53	8 4-6
		59,460			20 2-6
Carbon	43	28,144	34	35	5 4-6
Monroe		18,362	37	45	6 5-6
		46,506			12 3-6
Centre	25	34,418	33	30	5 1-6
Clearfield		25,741	34	35	5 4-6
Clinton		23,211	55	62	9 4-6
		83,370			20 3-6
Clarion	18	26,537	53	51	8 4-6
Jefferson		21,656	36	38	6 1-6
		48,193			14 3-6
Columbia	26	28,766	41	37	6 3-6
Montour		15,344	22	22	3 4-6
		44,110			10 1-6
Sullivan	44	6,191	14	22	3
Wyoming		14,585	47	52	8 1-6
		20,776			11 1-6
Dauphin	12	60,740	80	77	13
Lebanon		34,096	54	49	8 4-6
		94,836			21 4-6
Elk	37	8,488	21	33	4 3-6
Forest		4,010	16	15	2 3-6
Warren		23,897	66	72	11 3-6
		36,395			18 3-6
Fayette	14	43,284	56	69	10 2-6
Greene		25,887	24	32	4 4-6
		69,174			15

DISTRICTS OF MORE THAN ONE COUNTY—*Continued.*

COUNTIES.	No of district.	1870. Population.	1872. No. days.	1873. No. days.	Average in weeks.
Franklin	39	45,365	68	97	14
Fulton		9,360	11	14	2
		54,725			16
Juniata	41	17,390	17	24	3 2-6
Perry		25,447	39	24	5 1-6
		42,837			8 3-6
Pike	22	8,436	25	22	4
Wayne		33,188	37	37	6 1-6
		41,624			10 1-6
Mifflin	20	17,508	32	24	4 4-6
Snyder		15,606	20	20	3 2-6
Union		15,565	30	45	6 2-6
		48,679			14 3-6

The disparity in the judicial districts and in the labors of the judges is shown by the following facts taken from the table: In five single county districts, with an average population in each of 41,918, the courts sat less than seven weeks in the year. In three single county districts, average population 39,203, courts sat eight and nine weeks. In four single county districts, average population 60,547, courts sat ten and eleven weeks. In three single county districts, average population 50,167, courts sat thirteen and fifteen weeks. In five single county districts, average population 62,373, courts sat sixteen and seventeen weeks. In three single county districts, average population 114,385, courts sat nineteen and twenty weeks; and in four single county districts, average population 102,075, courts sat twenty-two, twenty-three and twenty-four weeks. The same disparity exists in the compound districts composed of two or more counties each. In district, No. 41, courts were held but eight weeks in the year. In five districts, Nos. 16, 22, 26, 43 and 44, the courts sat ten, eleven and twelve weeks. In four districts, Nos. 14, 18, 20 and 39, they sat fourteen, fifteen and sixteen weeks. In three districts, Nos. 4, 25 and 27, they sat eighteen and twenty weeks. In three districts, Nos. 12, 17 and 24, they sat twenty-one and twenty-two weeks. In these compound districts the traveling of the judge from county to county must also be considered, especially in districts composed of three and four counties. Another fact to be noticed is that in some of the districts in which the courts sat the longest the business was done by a single president judge.

Article V. Section 9. Strike out the words "learned in the law," in the first and second lines, and add at the end of the section the following sentence:

"The president or other law judge of said courts shall, in the absence of his associates, constitute a quorum."

The section will then read: "Judges of the courts of common pleas shall be judges of the courts of oyer and terminer, quarter sessions of the peace and general jail delivery, and of the orphans' courts, and within their respective districts shall be justices of the peace as to criminal matters. The president or other law judge of said courts shall, in the absence of his associates, constitute a quorum."

Remarks.—The literal effect of the section as it stands would seem to exclude the associates not learned in the law from the several courts mentioned in the section, in the districts composed of two or more counties. In these districts the office is not abolished, and it is absolutely essential that the powers of these associates should continue in all the courts, especially in the counties in which the president judge does not reside. In O'Marra *vs.* Commonwealth, the question arose, and the Supreme Court decided that the powers of the associates not learned in the law, remained in all the courts of districts not composed of single counties. The amendment will carry out the spirit of the Constitution, and give stability to the interpretation thus reached.

The purpose of the addition to the section, is to prevent the failure of a quorum by reason of the absence of the associates, and to harmonize the system, the president being the only judge in single districts, and of course constituting a quorum therein.

Article V. Section 15. Insert in the middle clause, after the word "shall," the words "be commissioned by the Governor, and shall;" and after the words "*ten years*," the words "beginning on the first Monday of January next after their election."

The middle clause will then read: "And shall be commissioned by the Governor, and shall hold their offices for the period of ten years, beginning on the first Monday of January next after their election, if they shall so long behave themselves well."

The entire section will then read:

"All judges required to be learned in the law, except the judges of the Supreme Court, shall be commissioned by the Governor, and shall be elected by the qualified electors of the respective districts over which they are to preside, and hold their offices for the period of ten years, beginning on the first Monday of January next after their election, if they shall so long behave themselves well; but for any reasonable cause, which shall not be sufficient ground for impeachment, the Governor may remove any of them on the address of two-thirds of each House of the General Assembly."

Remarks.—The purpose of this amendment is similar to that of the amendment to the 2d section, to wit: To supply the express power to commission the judges, and to fix the time when their terms shall begin, which had been done in the amendment of 1850.

Article V. Section 16. Strike out the entire section: "Whenever two judges of the Supreme Court are to be chosen for the same term of service, each voter shall vote for one only, and when three are to be chosen, he shall vote for no more than two; candidates highest in vote shall be declared elected."

Remarks.—The purpose of this amendment is to return to a direct election of the people for the Judges of the Supreme Court. The effect of the section, as it stands, is to deprive the people of an invaluable right—that of selecting those who administer their laws—and to invest it in an irresponsible body, unknown to any legitimate form of government, and subject to no correction. It is an anomolous, irregular and anti-democratic expedient, to reach a purpose foreign to the true principles of right government.

When two judges are to be chosen for the court in the last resort in which the final exposition of the laws should accord with the genius and sentiment of the whole people, no reason of sound principle, or of public welfare, should exclude the citizens from the choice of both.

Why should they be confined to a ballot for one, leaving the selection of the other to accident or the management of an irresponsible convention; or worse, perhaps, to the cunning manipulation of this uncertain ungoverned collection of partisans? The novelty means simply that a minority, no matter how it is composed, shall make appointments to office. Great or small, its voice is all potent, no matter how accidental or how it misrepresents genuine public sentiment.

From the very nature of public affairs, they are constantly varying, necessarily requiring changes of administration to meet the popular will. When these changes come, why should not the popular voice be heard in the election of judges in accord with the people themselves? But this invention seeks to repress the popular will by taking from the citizen one of his ballots and striking down his power to oppose any one he may deem bad or unfit. It is his right, necessary to the enjoyment of true liberty, to vote against as well as *for* candidates. But this device takes away that power. There is no longer a contest before the people, wherein the citizen may strike the unfit man of his own party by voting for his opponent; and no matter how he casts his single ballot, the incompetent or unfit man, by an ingenious stroke of art, is successful ere the election has begun. Nor is the right vain or useless, since four times have the people abandoned

party lines in voting for Supreme judges after the amendment of 1850 had invested them with the power of choice.

The people have had no opportunity of voting directly upon this anomaly. We think the opportunity should be given to them, and we have therefore reported an amendment to strike out the sixteenth section of the fifth article.

Article V. Section 18. Insert after the words "*paid by the State,*" at the end of the first clause the following: "Such compensation may be increased but shall not be diminished during their continuance in office."

The section will then read: The judges of the Supreme Court and the judges of the several courts of common pleas, and all other judges required to be learned in the law, shall at stated times receive for their services an adequate compensation which shall be fixed by law and paid by the State. Such compensation may be increased but shall not be diminished during their continuance in office.

Remarks.—Without this amendment any increase in the salaries of the judges can be made only prospectively. The effect of such an increase would be to exclude from its benefits all the experienced judges in the Commonwealth, and to admit to its benefits only the newly elected and inexperienced. It might happen that the judges of the court of last resort should be in the receipt of different salaries, of which that of the chief justice would be the smallest and that of the youngest justice the largest. So great an injustice could not have been intended and should be relieved against.

This amendment leaves the whole subject in the hands of the Legislature to be disposed of as the changing circumstances of the Commonwealth shall render expedient and just.

The provision prohibiting diminution of salary during a judges continuance in office is borrowed from the former Constitution. It has always been recognized as necessary to preserve the independence of the judiciary. The judiciary has been esteemed the weakest department of the government. It has neither patronage nor political influence, and is often the object of attack in times of high excitement. The power of another department, the Legislature, over the salaries of those who fill the offices of judges is at variance with the great American theory of the division of government into three independent branches—the law making, the law deciding and the law executing departments, and is one which can be exercised with tremendous effect in controlling judicial decisions. While in ordinary times no danger is to be apprehended, yet in times of high partisan excitement the exercise of the power is easily possible and might be attempted.

Article V. Section 21. Strike out the words, "*as herein provided,*" at the end of the section and substitute the following:

"Of prothonotaries of the Supreme Court, criers, tipstaves, auditors, commissioners to take testimony, examiners, masters in chancery, and such other officers necessary in the administration of justice in the said court, as shall be provided by law.

"The prothonotaries of the Supreme Court shall hold their offices for a term of three years, if they shall so long behave themselves well, and until their successors shall be appointed and qualified; but may be removed by the said court for misbehavior in office or upon conviction of any infamous or disgraceful offence."

The section will then read:

"No duties shall be imposed by law upon the Supreme Court or any of the judges thereof, except such as are judicial, nor shall any of the judges thereof exercise any power of appointment except of prothonotaries of the Supreme Court, criers, tipstaves, auditors, commissioners to take testimony, examiners, masters in chancery, and such other officers necessary in the administration of justice in the said court, as shall be provided by law. The prothonotaries of the Supreme Court shall hold their offices for a term of three years, if they shall so long behave themselves well, and until their successors shall be appointed and qualified; but may be removed by the said court for misbehavior in office or upon conviction of any infamous or disgraceful offence. The court of *Nisi Prius* is hereby abolished, and no court of original jurisdiction to be presided over by any one or more of the judges of the Supreme Court, shall be established.

Remarks.—The words in the section, "except as herein provided," evidence the intention of the Convention to specify afterwards the appointments to be made by the court. It was not done, however—probably from mere oversight; but the express denial of *any power* of appointment, as the section stands, raises a serious question as to the power of the court to appoint even those officers necessary for the administration of justice. The purpose of the amendment is to do what the Convention doubtless intended to do. The power of the appointment of the prothonotaries of the court was possessed under the Constitution of 1838, and evidently was not intended to be taken away.

Indeed the control of these officers is too important, the State Treasury having already been benefited by it in the settlement of their accounts.

Article VIII. Section 17. Strike out the words "members of the General Assembly," in the first clause, and insert after the word "thereto," at the end of the second clause, the following:

"At the trial of a contested election of a Senator or a Representative before a committee of either House, a judge of the Supreme Court, to be assigned thereto by the said court, shall preside, and shall decide questions regarding the admissibility of evidence, and shall, at the request of the

committee, pronounce his opinion upon the questions of law involved in the trial."

The whole section will then read as follows:

"The trial and determination of contested elections of electors of President and Vice President, and of all public officers, whether State, judicial, municipal or local, shall be by the courts of law, or by one or more of the law judges thereof. The General Assembly shall, by general law, designate the courts and judges by whom the several classes of election contests shall be tried, and regulate the manner of trial and all matters incident thereto. At the trial of a contested election of a Senator or Representative before a committee of either House, a judge of the Supreme Court, to be assigned thereto by the court, shall preside, and shall decide all questions regarding the admissibility of evidence, and shall, at the request of the committee, pronounce his opinion upon the questions of law involved in the trial; but no such law assigning jurisdiction or regulating its exercise shall apply to any contest arising out of an election held before its passage."

Remarks.—The words "members of the General Assembly," in the section, are in direct conflict with the last clause of the ninth section of the second article, which declares that: "Each House shall judge of the election and qualification of its members." One or the other provisions must give way, and it has been deemed better to leave each House to judge of the election of its members rather than to send the trial to another tribunal. But to guard against an unjust exercise of the power in a trial before a committee, we propose to amend, by placing at the head of it a judge of the Supreme Court, (assigned thereto by the court itself,) in analogy to the seventeenth section of the fourth article, from which the amendment is chiefly taken.

Article IX. Section 1. Insert after the words "corporate profit" in the last line but one, the following:

"Property owned by colleges, academies, and other institutions of learning not used for private gain;" and add at the end of the section the words "and hospitals."

The section will then read:

"All taxes shall be uniform on the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws; but the General Assembly may by general laws exempt from taxation public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, property owned by colleges, academies, and other institutions of learning not used for private gain, institutions of purely public charity, and hospitals."

Remarks.—The purpose of this amendment is to enable the Legislature, in the exercise of their sound discretion to exempt institutions of learning from taxation. Education is a State interest, and its benefits belong to the people. When an institution of learning is used for its proper end, and not for private gain, it subserves the welfare and best interest of the people themselves.

There is no sound reason why such institutions should be taxed. They radiate their benefits in another and better form by diffusing what is more valuable to the community than money returned by taxation into the public treasury at the expense of the ability of those institutions to attain their greatest good. Many of the colleges of the State have been founded or largely endowed through the munificent donations of private citizens. A policy which would permit such institutions to be taxed would be illiberal and an unjust imposition upon private benefactions, tending to their repression and to public injury.

Article IX. Section 8. Strike out the words, "*at any one time,*" in the last line of the section.

Remarks.—The purpose of this amendment is to limit the aggregate indebtedness which a city may contract to ten per cent. As the section stands, it is open to a doubt whether there is any limit to the amount of the indebtedness which a city may contract, if its debt exceeded seven per centum at the time of the adoption of the Constitution. An inference might be drawn from the words, "*at any one time,*" that the intent of this part of the section was merely to limit the amount of the addition to be made to the debt *at a given time*, leaving no limit to the *number* of additions to be made, or upon the total amount of indebtedness.

Article XIV. Section 6. Amend by adding at the end of the section the following:

"All fines and penalties shall be paid into the treasury of the proper county."

Remarks.—The purpose of this amendment is to correct an inequality arising from the present laws disposing of fines and penalties. In some counties these are appropriated to a single school district, or to a law association, or to other purposes. The expenses of the administration of justice are borne by the people of the whole county. It is but equitable that the results of this administration should be distributed equitably to the whole population and not to individuals, or to particular districts of persons. In one of the counties of the Commonwealth at the fall term of 1874, fines amounting to nearly $1,800, were, by a local law, diverted from the county treasury to that of the school district composed of the county town. A leading thought of the Convention was the introduction of unformity into the laws of the State, and this is evidenced among other provisions by sec-

tion twenty-six of the fifth article, declaring that all laws relating to courts shall be general and of uniform operation.

Article XIV. Section 7. Strike out this section:

"Three county commissioners and three county auditors shall be elected in each county where such officers are chosen, in the year one thousand eight hundred and seventy-five, and every third year thereafter; and in the election of said officers each qualified elector shall vote for no more than two persons, and the three persons having the highest number of votes shall be elected; any casual vacancy in the office of county commissioner or county auditor shall be filled by the court of common pleas of the county in which such vacancy shall occur, by the appointment of an elector of the proper county who shall have voted for the commissioner or auditor whose place is to be filled."

Remarks.—The objections to this section are serious and practical. The system of county management has always been a matter of law, and wisely so as absolutely necessary to accommodate it to the changes in times, places and circumstances. But this section establishes an unalterable and fundamental rule, which no exigency can modify or dispense with. It also destroys all experience and knowledge acquired in the management of county affairs, by turning out the whole board of commissioners or auditors at one and the same time. Under the old system two commissioners or auditors always remained in office to preserve the skill and knowledge acquired in the service. By the wholesale turning out required by the section, the clerk becomes practically the board of commissioners and these, when coming in altogether, must look to him for guidance in their duties. The auditors have not even this aid, but must endeavor to settle the accounts of the officers with the small knowledge that plain and unlearned men have who in the county generally fill the office of auditors.

The purpose of the section was to adapt the system to the new mode of voting. It seems to us the good proposed to be gained by it, bears no proportion to the evils it will entail.

If the people really desire to elect these officers in the mode proposed by this section, this will leave them at liberty to do so. They can pass laws providing for their election upon the cumulative plan, or the restricted, if they please. If, after trying the experiment, they should conclude that it was not best to continue it, they could abandon it without waiting to change the Constitution. The section was at best but an experiment; and experiments are more easily and safely tried in statutes than in constitutional provisions.

Article XVI. Section 4. Strike out the whole section: "In all elections for directors or managers of a corporation, each member or shareholder

may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer."

Remarks.—Article XVI. Section 4. This section is very obscure, and difficult to interpret. In ordinary corporation elections each stockholder casts a certain number of votes for each candidate; the number of votes being governed by the number of shares he holds. No matter how many directors or managers there may be, his right is to cast his whole vote for every one, because he has the same right of selection of every one who is to manage his affairs as a corporation. But by the terms of the section, he can cast the whole number of his votes for only one director, and if there be more than one, he must *distribute* his votes among them. If there be seven directors, (and oftentimes there are twelve or more,) and if he have three shares or three votes, he can, according to the new rule in the section, cast these three votes, at most, for only three directors.

He is thus deprived of voting for all the others; and even when he has as many votes as candidates he is compelled to distribute them in such manner that he loses the power he had hitherto. The proceeding is exceedingly anomalous, and restrains rather than enlarges the power of the shareholder.

If the purpose of the draughtsman of this section was to provide that each shareholder might "cumulate" upon *one* candidate, the whole number of votes he can cast for *all* the directors, if voting upon all his shares of stock for each director, it would appear that it is not accomplished well. Either the purpose of the section is not clear, or it is imperfectly expressed.

Article XVI. Section 5. Strike out the words "do any," in the first line, and insert the words "engage in" in lieu thereof.

The section will then read:

"No foreign corporation shall engage in business in this State without having one or more places of business, and an authorized agent or agents in the same, upon whom process may be served."

Remarks.—The purpose of this amendment is to obviate an interpretation which would prevent a foreign corporation from doing any *single* act relating to its affairs without complying with the requirements of the section. A corporation not intending to engage in business in the State may find it necessary to do a particular act not within the mischief to be remedied.

Article XVI. Section 10. Strike out the last clause, to wit, the words: "No law hereafter enacted shall create, renew or extend the charter of *more than one corporation.*"

Remarks.—The purpose of this amendment is to harmonize the section with the provision in the seventh section of the third article, that the General Assembly shall not pass any local or special law "creating corpora-

tions, or amending, renewing or extending the charters thereof." According to the seventh section of the third article, the Legislature can pass no special law to create, extend or renew charters. Yet from the terms of the last clause of the tenth section of the sixteenth article, an inference might be drawn that a special act could be passed if it contained a charter of not more than one corporation.

The third section of the third article confines legislation to single subjects. The last clause of this tenth section is useless, and its removal will prevent apparent conflict.

Article XVII. Section 9. Amend by inserting the words, "or extended," between the word "constructed" and the word "within."

The section will then read:

"No street passenger railway shall be constructed or extended, within the limits of any city, borough or township, without the consent of its local authorities."

Remarks.—The purpose of this amendment is to embrace a case as clearly within the evil to be remedied as that now provided for in the section. An existing passenger railway constructed with the assent of the city over certain streets, may, without its assent, be extended to other streets to the great injury of the public. The well known legislation to enable the Union Passenger railway company in Philadelphia to extend its railway into Market street, between Front and Ninth streets, affords an illustration of the omission intended to be supplied by the word "*extended.*"

We shall now direct attention to some matters discussed but not acted upon. Before doing so, in view of the future, as well as for the present information of the Legislature and the public, it is proper to refer to the workings of the commission. At its first business meeting (July 3, 1874,) after discussing the best plan of proceeding, it was determined that each commissioner should examine the new Constitution in detail and present his views in writing for consideration at the next meeting, September 1, 1874. The effect was to bring every section of the instrument into review. This required many days of chamber work for which no charge has been made. The expense of this commission is, therefore, not large, being confined to nine days of actual sessions and the traveling to and fro.

The first and most important subject requiring notice is the business of the Supreme Court. From lists furnished by the prothonotaries of the Eastern, Middle and Western districts, it appears that the total number of cases on the argument lists for 1873 was nine hundred, and on the lists for 1874 eleven hundred and seventy-five.

These are exclusive of arguments upon motions, etc., etc. It is evident the court cannot keep up with the business of the State. The increase in the number of judges will add nothing to the dispatch of business. All

the judges must sit to hear the arguments, each must examine every case for himself and must consult first upon the cases and then on the opinions as written.

The division of labor, in the writing of opinions merely, eases individual labor out of court but does not lessen the duties otherwise. Some remedy must be devised, else there will be denial or a delay of justice, contrary to the eleventh section of the bill of rights. It was proposed to establish a system of district courts of errors and appeals, to be held by the presidents of the common pleas of a certain number of adjoining districts, but discussion led to the unanimous opinion that the system would promote litigation, produce contrariety of decision in different districts, render the law uncertain, and introduce evils greater than the good to be accomplished.

We need only to refer to the experience of New York in reference to her system of district Supreme Courts and her high court of errors and appeals, the same in principle and effect as the system proposed for Pennsylvania. But we mean only to allude to this subject and not to discuss it.

The judicial system of Pennsylvania is remarkable for its simplicity and effectiveness, and ought not to be departed from. We understand it—a new one we may not, and it would only be an experiment, which had better be made by law than in a Constitution.

All that is needed is to prevent the useless flood of litigation forcing its current upward into the court of the last resort. The remedy is in the hands of the Legislature. Writs of error and appeal may be limited by the sum in controversy, say $500, with an exception as to constitutional questions, and such others as the court below shall certify, it verily believes to be important and necessary to be carried up. It is argued that the poor should be entitled to litigate as well as the rich.

But this is a mere surface reason and partakes more of demagogism than statesmanship. Where the public has furnished a sufficient tribunal of justice wherein all men's rights may be carefully considered and determined in a court of the most approved character, a trial of facts by their peers, and of law by an impartial and learned judge, the demands of justice are satisfied. Then the public have a right to an end of litigation and of expense. One of the oldest maxims of public right and expediency is that "*interest reipublicæ, ut sit finis litium.*

The argument that a man is entitled to a second hearing, can logically be used to demand a third. The interests of the public are higher than those of individuals, and hence there must be a limit at which the right to consume the public time and money must cease

This limitation falls on the rich and poor alike, and no man, rich or poor, has a right to litigate at his pleasure. It is an assumption untrue in fact that errors are frequent. The large preponderance of judgments affirmed

in the Supreme Court disproves the assertion. The proportion of causes affirmed to those reversed in the year 1874 was seventy-seven per cent., or over three-fourths ($\frac{3}{4}$.)

Another subject of notice is found in the twenty-second section of the third article. *Municipal* debts should not be the subject of investment by executors, administrators, guardians or trustees. Such legislation is sometimes procured to make the bonds of small cities saleable. It is doubtful whether the bonds of such cities as Philadelphia and Pittsburg should be made so. The moneys of widows, orphans, infants, the insane, and others under disability, should not be ventured upon the uncertain waves of city politics or plans.

The fourth section of the eighth article, relating to elections, was much discussed. Time has not yet tested the utility of the amendments in this section. From information we have reason to believe there are places where the numbering of the ballots have been omitted. This raises a serious question; how far the omission will invalidate the entire poll. The requisition is both a constitutional and a mandatory one. We simply call attention to this. It is said, also, that frauds are easily perpetrated, by substituting ballots in handling them for numbering.

Another subject, and one of paramount importance, is the first section of the ninth article, as to taxation and finance. A practical question has already risen in the city of Pittsburg, to wit: What is constitutional *uniformity?* It was fully argued last October, and so difficult is it the Supreme Court has ordered a re-argument. The section declares that "all *taxes* shall be uniform upon the *same class* of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under *general* laws."

It will be observed it is *taxes*, (the thing levied,) not *taxation*, (or the system) that shall be uniform—of *one* form. Does this mean it shall be a *rate ad valorem*, or a certain sum on specific articles? The uniformity must relate to the *same class* of subjects within certain *territorial* limits.

Thus the power of classification of subjects in given territories is retained. Can the Legislature impose a rate on one class and a specific sum on the articles of another class? Again, take a given territory, say the city of Philadelphia, containing both *urban* and *rural* property, may the city (the authority levying the tax) impose a rate of *three* mills on urban and *two* mills on rural property? If uniform taxes mean equality of burthen (a most indefinite idea, and yet the probable thought of the convention,) then property having the benefit of pavements, water, gas, fire department, sewerage, police, ready access to stores, markets and places of business and public resort, should bear a higher rate of tax than rural property devoid of these. But is it uniform to lay one tax of *two* mills

and another of *three* mills on real estate within the same territorial limits? Again, these uniform taxes must be imposed by general laws. As a practical question, how is it possible for the Assembly so to legislate, in view of the different territorial limits, the multitude and the infinite variety of the subjects of taxation? Again, do uniform taxes, if equality of burthen be its meaning, require every subject to be taxed? As a surface thought uniform taxes is a pleasant one, but let any one sit down to the practical test of drawing a general act which will levy uniform taxes, and he will find himself unable at the very start to define "uniform taxes." Unless he can so define as to give it a practical application to the different subjects of taxation, he fails to furnish a guide for legislation. This brings into view the next difficulty, to wit: Is "uniform taxes" a *judicial* question, or *legislative* only?

If judicial, then every tax law can be brought before the courts, and probably no law will ever stand the test of critical examination. Perhaps we have now said enough to invite the attention of the Legislature, and the people, to this most difficult subject.

We also invite your attention to the 13th article, relating to new counties. It is, perhaps, a question whether the provisions of this article are an adequate protection against the evil of cutting up the territories of the State into small and unimportant municipalities. Private greed, and love of gain, tend to the creation of insignificant counties, with their trains of courts, officers and other expensive institutions

The people are thus unnecessarily taxed to gratify the wishes of a few interested parties.

This subject suggests also its connection with the 7th section of the 3d article, which forbids special or local legislation as to new counties. It is difficult to see how any general law can be devised for the creation of new counties, which will not take out of the hands of those most qualified to determine it, the question of creating a new municipal division of the State—one of its members entitled to a representative in the legislative body, and having a direct influence upon the interests of the State at large. A superintending *State* power seems to be required. As connected with this, is also the prohibition in the 7th section against creating offices, and prescribing the powers and duties of officers in counties and cities. This section prohibiting special legislation is one of the great reforms introduced by the Convention, and we are not disposed to recommend any changes in it. Time must determine the necessity of amendment. Yet it is proper we should call attention to these subjects, in order to induce careful observation of the practical workings of the section, and to direct inquiry into the great extent to which it has taken from the Legislature the power to

adapt legislation to the local peculiarities and needs of the several cities and counties of the Commonwealth.

Under its operation, no matter how urgent the necessity for a particular office in some particular city or county may be, nor how unnecessary, indeed hurtful, such office may be in the other cities and counties of the State, the Legislature cannot provide for the need where it exists, except by the enactment of a general law, which shall extend the provision where the need does not exist and which may operate hurtfully on the people of other localities. A general law for a special purpose is the worst form of special legislation, and it would seem that such modification of this section as would enable the Legislature to meet the real needs of local government by proper local legislation, without a resort in every instance to the expedient of a general law, needed only in a particular locality, could be safely made. But the precise character and the extent of the modification required can be determined in the light which actual experience alone can furnish.

All of which is respectfully submitted, 26th January, 1875.

DANIEL AGNEW,
Chairman.
BENJAMIN HARRIS BREWSTER,
SAMUEL E. DIMMICK,
ANDREW T. M'CLINTOCK,
W. H. PLAYFORD,
WILLIAM A. WALLACE,
HENRY W. WILLIAMS.